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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91169342
Party	Defendant Palm Breweries Palm Breweries Steenhuffeldorp 3 BEX 1840 Londerzeel (Steenhuffel),
Correspondence Address	David B. Kirschstein, Esq. KIRSCHSTEIN, OTTINGER, ISRAEL 489 Fifth Avenue, 17th Floor New York, NY 10017-6105
Submission	Answer
Filer's Name	David B. Kirschstein
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Signature	/David B. Kirschstein/
Date	04/04/2006
Attachments	PALM EXPORT Answer.pdf (13 pages)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

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ANHEUSER-BUSCH, INCORPORATED, :
:
:
Opposer, :
:
:
v. : Opposition No. 91-169,342
:
PALM BREWERIES, :
:
:
Applicant. :
:
-----X

ANSWER

TO THE COMMISSIONER OF PATENTS
AND TRADEMARKS:

Applicant Palm Breweries for its Answer to the Opposition herein alleges as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 1, 2, 3, 4, 5 and 6 of the Notice of Opposition.
2. Denies the allegations of paragraph 7 of the Notice of Opposition.
3. Admits the allegations of paragraphs 8, 9 and 10 of the Notice of Opposition.

AS AND FOR AN AFFIRMATIVE DEFENSE,
APPLICANT ALLEGES AS FOLLOWS:

4. The use of a depiction of a draft horse in connection with the marketing of beer is not distinctive since such depiction is an obvious symbol of how beer used to be delivered, i.e., in wagons pulled by draft horses.
5. The draft horse depicted in opposer's registration is of the Clydesdale breed which is a breed of draft horse developed by farmers in Lanarkshire, Scotland where the river Clyde flows. The old name of Lanarkshire is Clydesdale.

6. The draft horse depicted in applicant's mark is a Brabant or Brabander or "Belgian" horse which is a breed of horse originating in the Belgian province of Brabant. The Belgian government protects this breed with the help of sponsors such as applicant whose brewery is located in the province.

7. The opposer does not have the exclusive right to the use and depiction of draft horses in trademarks applied to beer, particularly in light of the historical use of such horses in the delivery of beer.

8. A reference to horses and depictions thereof forms a part of a number of trademarks which have been registered in the U.S. Patent and Trademark Office for beer. Examples thereof are attached hereto as Exhibit A.

9. The Brabant draft horse depicted in the mark sought to be registered does not resemble a Clydesdale other than in the general characteristics of a draft horse which are shared by all draft horses such as size, weight and the thick hair around the hooves, etc.

10. Opposer's registration of the mark CLYDESDALE has nothing to do with the issue in this case since the horse depicted in applicant's mark is not a Clydesdale.

11. The depiction of a draft horse is not a dominant part of the mark sought to be registered; rather, the dominant portion of the mark is the word PALM.

12. In view of the above, the use of applicant's mark in connection with beer is not at all likely to cause confusion, mistake or deception with respect to opposer or its beer sold under opposer's trademarks.

WHEREFORE, Applicant prays that the Opposition be dismissed.

Respectfully submitted,

KIRSCHSTEIN, OTTINGER,
ISRAEL & SCHIFFMILLER, P.C.
Attorneys for Applicant
489 Fifth Avenue
New York, New York 10017-6105
(212) 697-3750

By _____
DAVID B. KIRSCHSTEIN

Dated: New York, New York
April 4, 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer was served on Opposers' counsel by e-mail addressed to dmasters@loeb.com and by first class mail, postage prepaid, in an envelope addressed to:

Douglas N. Masters, Esq.
Loeb & Loeb LLP
321 North Clark Street
Suite 2300
Chicago, IL 60610

this 4th day of April, 2006.


DAVID B. KIRSCHSTEIN

EXHIBIT A

Int. Cl. 32

Prior U.S. Cl. 48

United States Patent and Trademark Office

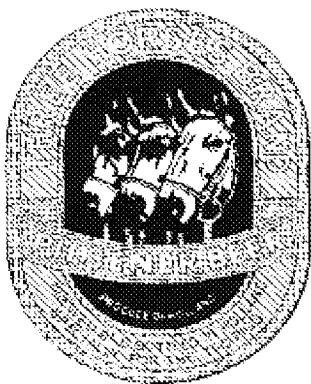
Reg. No. 911,027

10 Year Renewal

Registered Apr. 6, 1971

Renewal Term Begins Apr. 6, 1991

TRADEMARK
PRINCIPAL REGISTER



VERENIGDE NEDERLANDSE
BROUWERIJEN BREDA-CRANIE-
BEER B.V. (NETHERLANDS COMPA-
NY)
CERESSTRAAT 13
BREDA, NETHERLANDS, BY CHANGE
OF NAME AND ASSIGNMENT FROM
N.V. BIERBROUWERIJ "DE DRIE
HOEFIJZERS" (NETHERLANDS COM-
PANY) BREDA, NETHERLANDS

APPLICANT MAKES NO CLAIM TO
THE EXCLUSIVE USE OF THE WORDS
"BRAND," "PHISNER" BEER,"

"PRODUCE OF HOLLAND," AND
"BREWED AND BOTTLED IN HOL-
LAND," "SPECIALLY FOR THE TROP-
ICS," APART FROM THE MARK AS A
WHOLE.

THE DRAWING IS LINED FOR THE
COLORS GOLD AND GREEN BUT NO
CLAIM IS MADE TO COLOR.

FOR BEER, IN CLASS 34 (INT. CL.
32).

FIRST USE 30-9-1965; IN COMMERCIAL
12-9-1965.

SER. NO. 72-542,883, FILED 11-6-1969.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Aug. 27, 1991.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 32

Prior U.S. Cl.: 48

Reg. No. 1,797,241

United States Patent and Trademark Office Registered Oct. 5, 1993

TRADEMARK
PRINCIPAL REGISTER



VERENIGDE NEDERLANDSE BROUWERIJEN
BREDA-ORANJEBOOM B.V. (NETHER-
LANDS CORPORATION)
CERESSTRAAT 13
4811 CA BREDA, NETHERLANDS

FOR: BEER, IN CLASS 32 (U.S. CL. 48).
FIRST USE 9-6-1990; IN COMMERCE
9-17-1990.

OWNER OF U.S. REG. NO. 911,027.
NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "BREDA", "EST. 1628" AND
"HOLLAND LAGER BEER", APART FROM
THE MARK AS SHOWN.

SN 74-261,787, FILED 4-2-1992.

DARREN COHEN, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 1,927,199

United States Patent and Trademark Office Registered Oct. 17, 1995

TRADEMARK
PRINCIPAL REGISTER

12 HORSE

GENESEE BREWING COMPANY, INC., THE
(NEW YORK CORPORATION)
P.O. BOX 762
ROCHESTER, NY 14603

DOM. MALT BEVERAGES, NAMELY BEER
AND ALE, IN CLASS 32 (U.S. CLS. 45, 46 AND
48).

FIRST USE 9-6-1933; IN COMMERCE
9-6-1933.

OWNER OF U.S. REG. NO. 314,280.

SER. NO. 74-502,631, FILED 3-17-1994.

RACHEL BLUE, EXAMINING ATTORNEY

Int. Cl.: 32

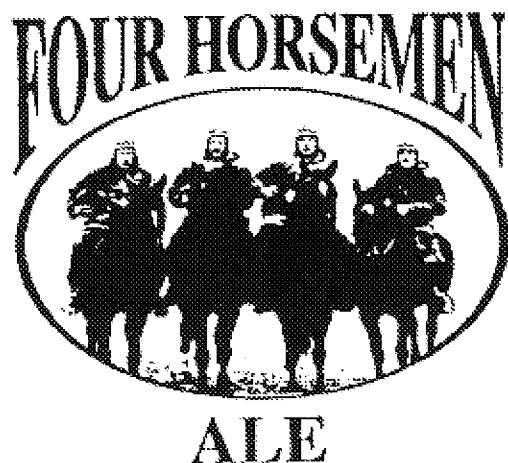
Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,091,067

United States Patent and Trademark Office

Registered Aug. 26, 1997

TRADEMARK
PRINCIPAL REGISTER



MISHAWAKA BREWING COMPANY, THE (INDIANA CORPORATION)
3703 NORTH MAIN STREET
MISHAWAKA, IN 46545

FOR: BEER, IN CLASS 32 (U.S. CLS. 45, 46
AND 48).

FIRST USE 12-4-1994; IN COMMERCE
5-6-1995.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "ALE", APART FROM THE
MARK AS SHOWN.

THE STIPPLING IN THE DRAWING IS A
FEATURE OF THE MARK AND DOES NOT
INDICATE COLOR.

SER. NO. 75-144,501, FILED 8-5-1996.

ELIZABETH HUGHITT, EXAMINING ATTORNEY

Int. Cl: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,653,851

United States Patent and Trademark Office

Registered Nov. 26, 2002

TRADEMARK
PRINCIPAL REGISTER

3 HORSES

VERENIGDE NEDERLANDSE BROUWERIJEN
BREDA-ORANJEBOOM B.V. (NETHERLANDS
CORPORATION)
CERESSSTRAAT 13
4811 CA BREDA, NETHERLANDS

FOR: BEERS, IN CLASS 32 (U.S. CLS. 45, 46 AND
48).

FIRST USE 5-11-1963; IN COMMERCE 5-11-1963.

OWNER OF U.S. REG. NOS. 911,027 AND 1,297,241.

SER. NO. 76-294,377, FILED 8-2-2001.

YVONNE JONES, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,692,785

United States Patent and Trademark Office

Registered Mar. 4, 2003

TRADEMARK
PRINCIPAL REGISTER

DEAD HORSE

MOAB BREWERS, LLC (UTAH LIMITED LIABILITY CORPORATION)
3121 AMERICAN SADDLER
PARK CITY, UT 84060

FOR: BEER; BREWED MALT-BASED ALCOHOLIC BEVERAGE IN THE NATURE OF A BEER; COFFEE-FLAVORED BEER; GINGER BEER; MALT

BEER; PALE BEER, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 5-5-1996; IN COMMERCE 3-1-2001.

SER. NO. 76-383,761; FILED 3-14-2002.

MARK T. MULLEN, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,692,788

United States Patent and Trademark Office

Registered Mar. 4, 2003

TRADEMARK
PRINCIPAL REGISTER

YOU CAN'T BEAT A DEAD HORSE

MOAB BREWERS, LLC (UTAH LIMITED LIABILITY CORPORATION)
3121 AMERICAN SADDLER
PARK CITY, UT 84060

FOR: BEER; BREWED MALT-BASED ALCOHOLIC BEVERAGE IN THE NATURE OF A BEER; COFFEE-FLAVORED BEER; GINGER BEER; MALT

BEER; PALE BEER, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 5-5-1996; IN COMMERCE 3-1-2001.

SER. NO. 76-383906, FILED 3-14-2002.

MARK T. MULLEN, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,723,453

United States Patent and Trademark Office

Registered June 10, 2003

TRADEMARK
PRINCIPAL REGISTER



UNITED BREWERIES LIMITED (INDIA CORPORATION)
13 VITTA MALLAYA ROAD
BANGALORE-560001, INDIA

FOR: LAGER BEER, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 8-0-1992; IN COMMERCE 8-0-1992.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "LAGER BEER", APART FROM THE MARK AS SHOWN.

THE LINING IN THE DRAWING IS A FEATURE OF THE MARK AND IS NOT INTENDED TO INDICATE COLOR.

SER. NO. 76-350,894, FILED 12-20-2001.

DAWN FELDMAN, EXAMINING ATTORNEY

Int. Cl: 32

Prior U.S. Cls.: 45, 46 and 48

United States Patent and Trademark Office

Reg. No. 3,049,347

Registered Jan. 24, 2006

TRADEMARK
PRINCIPAL REGISTER

FLYING HORSE

MER SCHUTZRECHTSVERWALTUNGS GMBH
(FED REP GERMANY CORPORATION)

PRINZREGENTENUFER 13

D-90489 NURNBERG, FED REP GERMANY

FOR: MINERAL WATERS; AERATED WATERS;
NON-ALCOHOLIC DRINKS, NAMELY, SODA AND
LEMONADE; FRUIT DRINKS; FRUIT JUICES; SYR-
UPS AND CONCENTRATES FOR MAKING BEV-
ERAGES; ENERGY DRINKS; AND BEER, IN CLASS
32 (U.S. CLS. 45, 46 AND 48).

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF FED REP GERMANY REG. NO.
39936154, DATED 6-8-1999, EXPIRES 3-31-2009.

OWNER OF U.S. REG. NO. 2,396,663.

SER. NO. 38-454,672, FILED 7-21-2004.

SUSAN LESLIE DURGIS, EXAMINING ATTORNEY